

SERVICE DATE – JANUARY 27, 2005

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-254 (Sub-No. 7X)

PROVIDENCE AND WORCESTER RAILROAD COMPANY–ABANDONMENT  
EXEMPTION–IN WORCESTER COUNTY, MA, AND WINDHAM COUNTY, CT

Decided: January 26, 2005

Providence and Worcester Railroad Company (P&W) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a portion of its line of railroad known as the Southbridge Running Track, extending from milepost 0.18, in Webster, MA, to milepost 10.98, in Southbridge, MA, a distance of approximately 10.8 miles, in Worcester County, MA, and Windham County, CT. Notice of the exemption was served and published in the Federal Register on November 4, 2003 (68 FR 62497-98). The exemption became effective on December 4, 2003.

By decision and notice of interim trail use or abandonment (NITU) served on December 3, 2003,<sup>1</sup> the proceeding was reopened and a 180-day period authorized the Commonwealth of Massachusetts, by and through its Executive Office of Transportation and Construction, to negotiate an interim trail use/rail banking agreement with P&W for the portion of the right-of-way between milepost 0.18, in Webster, and milepost 1.4 +/-, in Dudley, and between milepost 4.8 +/-, in Dudley, and milepost 10.98, in Southbridge, MA, under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). By letter filed on September 13, 2004, P&W gave notification that a trail use/rail banking agreement had been consummated with regard to the portion of the line located in Massachusetts.

On December 30, 2004, the State of Connecticut Department of Environmental Protection (CTEP) late-filed a request for the issuance of a NITU under the Trails Act and 49 CFR 1152.29 for the remaining 3.4-mile portion of the rail line from milepost 1.39, in Thompson, to milepost 4.8, in Quinebaug, CT, and for a 180-day public use condition under 49 U.S.C. 10905,<sup>2</sup> in order to negotiate

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<sup>1</sup> The December 3, 2003 decision also imposed a public use condition, which expired on June 1, 2004, and environmental conditions, which remain in effect.

<sup>2</sup> The Board's Section of Environmental Analysis (SEA) served an environmental assessment on November 7, 2003, which indicated that the right-of-way may be suitable for other public use following abandonment.

with P&W for acquisition of the right-of-way for use as a recreational trail.<sup>3</sup> CTEP requests that P&W be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms, and that P&W be barred from removing or destroying any trail-related structures, such as bridges, trestles, culverts and tunnels, for a 180-day period. CTEP submitted a statement of willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for payment of any and all taxes that may be levied or assessed against, the right-of-way, as required at 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. By facsimile received on January 7, 2005, and by letter filed on January 12, 2005, P&W advised the Board that it is willing to negotiate with CTEP.

Inasmuch as P&W has not consummated abandonment of the part of the line located between milepost 1.39 and milepost 4.8, and is willing to negotiate with CTEP for trail use, a NITU will be issued under 49 CFR 1152.29. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, P&W may fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

CTEP's request for a public use condition, however, will be denied. Under 49 U.S.C. 10905 and 49 CFR 1152.28(b), the Board cannot impose a public use condition beyond a 180-day period after the effective date of the decision authorizing the abandonment (here, December 4, 2003). That period ended on June 1, 2004.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

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<sup>3</sup> The November 4, 2003 notice provided that trail use/rail banking requests were to be filed by November 14, 2003, and that requests for public use conditions were to be filed by November 24, 2003. However, in Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting filings after the due date when good cause is shown. Because there is no indication that CTEP's late-filed request will prejudice any party, it will be accepted. See Wheeling & Lake Erie Railway Company—Abandonment Exemption—in Starke County, OH, STB Docket No. AB-227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

It is ordered:

1. This proceeding is reopened.
2. The late-filed request for a NITU under 16 U.S.C. 1247(d) and for a public use condition under 49 U.S.C. 10905 is accepted.
3. Upon reconsideration, the decision and notice served December 3, 2003, exempting P&W's abandonment of the above-described line, is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit CTEP to negotiate with P&W for trail use of the 3.4-mile portion of the line located between milepost 1.39 and milepost 4.8, for a period of 180 days commencing from the service date of this decision and notice (until July 26, 2005), and subject to the conditions imposed in the December 3, 2003 decision.
4. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
5. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations of the right-of-way.
6. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
7. If an agreement for interim trail use/rail banking is reached by July 26, 2005 (the 180th day after service of this decision and notice), interim trail use may be implemented. If no agreement is reached by that time, P&W may fully abandon the line, provided that the environmental conditions imposed in the December 3, 2003 decision are met.
8. CTEP's request for a public use condition is denied.

9. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary